UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,936	07/21/2003	James R. Keene	5-904	6475

49884 7590 06/28/2005

JUSTIN S. RERKO & ASSOCIATES, L.L.C.
19836 ELLSWORTH DR.
STRONGSVILLE, OH 44149

EXAMINER	
CANFIELD, ROBERT	
ART UNIT	**PAPER NUMBER**
3635	

DATE MAILED: 06/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/623,936	KEENE, JAMES R.	
	Examiner	Art Unit	
	Robert J. Canfield	3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *01 April 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3 and 6-19* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *19* is/are allowed.

6)☒ Claim(s) *1-3,6-8,11 and 15-17* is/are rejected.

7)☒ Claim(s) *9,10,12-14 and 18* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *10 February 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

1. This Office action is in response to the amendment filed 04/01/05. Claims 1-3 and 6-19 are pending. Claims 4 and 5 have been canceled.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 2, and 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 3,500,618 to Sokol.

Sokol provides in figure 1 a trapezoidal shaped thermoplastic fibrous mat formed of thermoplastic filaments (Column 2, lines 61+).

Claim 6 fails to provide any specific thickness as the mortar joint is not a positively recited element of the claims and its thickness is not defined.

Similarly in claim 8, the associated masonry member is not a positively recited element of the claims and its dimensions are not defined.

The recitation "a weep vent" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of

the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

All recitations towards the wall structure are made with intended use language. Recitations of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

4. Claims 1, 2, 6-8, 11, and 15-17 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent Application Publication 2004/018037 to Sourlis.

Sourlis provides weep vents 30 which may be trapezoidal ([0042]) and which are cooperatively associated with a masonry wall. Elements 30 being formed of intertwined polymeric filaments ([0037]). As to claims 1, 2, and 4-8 the claims fail to provide any specific thickness as the mortar joint is not a positively recited element of the claims and its thickness is not defined. Further, the associated masonry member/wall is not a positively recited element of the claims and its dimensions are not defined. While claim 11 calls for the weep vent to be cooperatively associated with a masonry wall it doe not require the weep vent to be installed with its inner end region and outer end region proximate the inner and outer surfaces of the wall. This relationship is only set out with the intended use language "for...".

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 3,500,618 to Sokol.

Sokol fails to specify that the filaments have a diameter of between about 0.025 and 0.030 of an inch.

The examiner takes Official Notice that it would have been obvious to one having ordinary skill in the art at the time of the invention that the filaments of the fibrous batt of Sokol have a diameter of between about 0.025 and 0.030 of an inch.

It would have been obvious because this is typical diameter range for thermoplastic filaments used in air filters of the type of Sokol.

7. Claims 9, 10, 12-14, and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Claim 19 is allowed.

9. Applicant's arguments filed 04/01/05 have been fully considered but they are not fully persuasive.

Applicant argues that Sokol is directed towards an air filter and is not disclosed as relating to, being adapted for, or in any way useful in connection with weep venting functions in a masonry wall is not persuasive. As noted in the rejection, all of the language concerning weep vents and masonry wall structures is set forth as intended use language. The intermediate product of Figure 1 of Sokol provides each of the positively recited structural features of the "weep vent" of the instant claims and is capable of performing the intended use.

Applicant's argument that Franz does not teach a substantially uniform thickness has been found persuasive.

Applicant's argument that Schulenburg fails to provide opposed sides that extend in non-parallel relationship between the front end and rear end has been found persuasive.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert J Canfield whose telephone number is 703-308-2482. The examiner can normally be reached on M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 703-308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert J Canfield
Primary Examiner
Art Unit 3635

06/24/05